

FILED

AUG 14 2008

**BEFORE THE
INDIANA UTILITY REGULATORY COMMISSION**

**PETITION OF THE BOARD OF DIRECTORS)
FOR UTILITIES OF THE DEPARTMENT OF)
PUBLIC UTILITIES OF THE CITY OF)
INDIANAPOLIS, AS SUCCESSOR TRUSTEE)
OF A PUBLIC CHARITABLE TRUST, D/B/A)
CITIZENS GAS & COKE UTILITY FOR (1))
AUTHORITY TO INCREASE ITS RATES AND)
CHARGES FOR GAS UTILITY SERVICE AND) **CAUSE NO. 43463**
APPROVAL OF A NEW SCHEDULE OF)
RATES AND CHARGES APPLICABLE)
THERE TO, (2) AUTHORITY, TO THE EXTENT)
NECESSARY AS AN ALTERNATIVE)
REGULATORY PLAN, TO TRACK THE GAS COST)
COMPONENT OF ITS BAD DEBT EXPENSE IN)
ITS GAS COST ADJUSTMENT FILINGS,)
(3) AUTHORITY PURSUANT TO 170 IAC 5-1-27(F))
FOR A NON-GAS COST REVENUE TEST TO)
DETERMINE WHEN DEPOSITS ARE REQUIRED)
FOR EXTENSION OF FACILITIES, (4) APPROVAL)
OF OTHER CHANGES TO ITS GENERAL TERMS)
AND CONDITIONS FOR GAS SERVICE, AND (5))
APPROVAL OF NEW DEPRECIATION ACCRUAL)
RATES)**

STIPULATION AND SETTLEMENT AGREEMENT

On March 18, 2008, the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis, as Successor Trustee of a Public Charitable Trust, d/b/a Citizens Gas & Coke Utility ("Citizens") filed with the Indiana Utility Regulatory Commission ("Commission") its Verified Petition requesting (i) authority to increase its rates and charges for gas utility service rendered by it and approval of a new schedule of rates and charges applicable thereto; (ii) authority, to the extent necessary as an alternative regulatory plan, to track the gas cost component of its net write-offs in its

gas cost adjustment ("GCA") filings; (iii) authority pursuant to 170 IAC 5-1-27(F) for a non-gas cost revenue test to determine when deposits are required for extension of facilities; (iv) approval of certain other changes to its general terms and conditions for gas service; and (v) approval of new depreciation accrual rates. Citizens filed testimony and exhibits in support of its Verified Petition on March 18, 19 and 28, 2008 (Citizens filed updates and corrections to its case-in-chief on July 1, 2008). On April 10, 2008, the Citizens Industrial Group ("CIG") filed a Petition to Intervene in this proceeding, which was granted on the same day during the Prehearing Conference held in this Cause.

Pursuant to the terms of the Prehearing Conference Order, Citizens, CIG and the Indiana Office of the Utility Consumer Counselor ("OUCC") (collectively, the "Parties") filed a status report with the Commission on July 7, 2008 summarizing the progress of ongoing settlement negotiations. The report indicated that while all issues still were in dispute, "[t]he Parties remain committed to addressing the possibility of settling some or all of the issues in this proceeding [and were] attempting to schedule one or more settlement meetings in the upcoming weeks to discuss disputed issues. . . ."

Following the submission of Citizens' case-in-chief, the OUCC and CIG engaged in written discovery and had communications with Citizens' personnel regarding the facts related to the relief requested in the proceeding. That discovery and direct communications with Citizens enabled the OUCC and CIG to develop their positions as to each of the elements of this case.

On July 16, 2008, the Parties filed a second status report indicating that certain issues had been resolved by the Parties "subject to their incorporation into a mutually acceptable Stipulation and Settlement Agreement." The second status report stated that the Parties still were attempting to agree upon: (i) the amount of the necessary

adjustment to Citizens' rates and charges for gas utility service in order to meet the requirements for reasonable and just rates and charges for service set forth in Ind. Code § 8-1.5-3-8; and (ii) the manner in which the agreed-upon increase in Citizens' operating revenues should be allocated among the respective customer classes.

On July 18, 2008, the Parties appeared before the Commission for a status conference and reported on the status of negotiations as well as related procedural matters. On July 22, 2008, the Parties filed a Joint Motion for Extension of Time for Filing Testimony (the "Joint Motion"). The Joint Motion indicated that the "Parties have continued to discuss the settlement of remaining issues and believe prospects for a settlement will be enhanced by a brief extension of the due dates for the filing of the remaining testimony and exhibits."

Subsequent to filing the second status report and the Joint Motion, the Parties conducted face-to-face meetings and otherwise communicated with each other regarding the possibility of settling the remaining outstanding issues described in the report. Based on those meetings, the Parties reached an agreement with respect to the amount of the necessary adjustment to Citizens' rates and charges, as well as the manner in which the total revenue requirement should be allocated among the customer classes. The Parties' agreement is set forth in this Stipulation and Settlement Agreement ("Settlement Agreement"). The Parties agree to the following matters and request the Commission to enter an agreed-upon Final Order following the August 25, 2008 hearing on the settlement.

I. Operating Revenue and Revenue Requirements

The Parties' agreement with respect to Citizens' pro forma operating revenue and its revenue requirements under Ind. Code § 8-1.5-3-8 are reflected by line item in Joint Settlement Exhibit 2, which is attached hereto, and is summarized below:

1. ***Petitioner's Operating Revenue.*** The Parties agree that Citizens' total pro forma operating revenues at present rates are \$443,392,884. Upon the Commission's adoption of a Final Order approving the terms and conditions of this Settlement Agreement, the Parties agree that Citizens' pro forma operating revenues should be increased by \$16,500,000 in arriving at the pro forma total operating revenues at proposed rates of \$459,892,884, representing a 3.7% increase in pro forma operating revenues.

2. ***Citizens' Annual Cash Revenue Requirements.*** The Parties agree Citizens' annual cash revenue requirements are as summarized below:

a. ***Gas Costs.*** Citizens' annual revenue requirement for gas costs is \$326,608,969.

b. ***Other Operating and Maintenance Expenses.*** Citizens' annual revenue requirement for other operating and maintenance expenses, including taxes other than income taxes, is \$40,702,569.

c. ***General and Administrative Expenses.*** Citizens' annual revenue requirement for general and administrative expenses is \$34,690,587.

d. ***Extensions and Replacements.*** Citizens' annual revenue requirement for extensions and replacement is \$23,994,628.

e. ***Debt Service.*** Citizens' annual revenue requirement for debt service is \$26,375,886.

f. *Taxes.* Citizens' annual revenue requirement for taxes is \$7,157,245.

g. *Utility Receipts Tax.* The Parties agree that Citizens' total cash revenue requirement should be increased by \$231,000 to account for the increase in Indiana Utility Receipts Tax resulting from the proposed rate increase.

h. *Incremental Write-Off Non-Gas Costs.* The Parties agree that Citizens' total cash revenue requirement should be increased by \$132,000 to account for the increase in the non-gas component of net write-offs resulting from the proposed rate increase. As reflected in Section IV, *infra*, the Parties have agreed that the Commission should authorize Citizens to recover in its GCA filings the gas cost component of net write-off costs at a fixed net write-off ratio of 0.80%.

3. *Citizens' Aggregate Annual Revenue Requirement.* The Parties agree that Citizens' annual net revenue requirement is \$459,892,884, as detailed below:

Gas Costs	\$326,608,969
Operation and Maintenance Expense	\$40,702,569
General and Administrative Expense	\$34,690,587
Extensions and Replacements	\$23,994,628
Debt Service	\$26,375,886
Taxes	<u>\$7,157,245</u>
Revenue Requirement	\$459,529,884
Plus: Utility Receipts Tax (1.4% of increase)	\$231,000
Incremental Net-Write-Off Non-Gas Costs	\$132,000
Net Revenue Requirement	\$459,892,884
Pro Forma Revenues	<u>\$443,392,884</u>
Deficit	\$16,500,000
Percent Increase Required	3.7%

4. *Amount of Stipulated Rate Increase and Approval of Changes to Rate Schedules.* The Parties agree that Citizens' current rates and charges for service should be increased upon the Commission's adoption of a Final Order approving the terms and conditions of this Settlement Agreement so as to produce additional operating revenues of \$16,500,000, and total pro forma operating revenues of \$459,892,884, representing a 3.7% increase in operating revenues, as shown in Joint Settlement Exhibit 2.

II. Cost of Service and Rate Design

5. The Parties acknowledge and agree that rates should be designed in order to allocate revenue requirements between and among the classes of Citizens' customers in a fair and reasonable manner consistent with cost-causation principles. The Parties further acknowledge and agree that a variety of methods have been utilized to determine cost allocation by rate class, that, absent this Settlement Agreement, the respective Parties are prepared to present cost-of-service evidence in this proceeding utilizing different methodologies, and that such evidence would support a range of possible outcomes.

6. Citizens is prepared to put forward its prefiled cost-of-service study. The OUCC is prepared to propose a modified cost-of-service study in which, among other things, the distribution and mains costs for the system are allocated among the rate classes on a peak demand and average demand basis. CIG is prepared to propose a cost-of-service study using, among other things, the method of peak demand and customer count to allocate distribution and mains costs.

7. The Parties stipulate that the Citizens, OUCC and CIG proposals regarding mains allocation utilize recognized methodologies that the Commission has previously considered, may properly consider, and can potentially adopt. The Parties agree that the cost allocation agreed to in this Settlement Agreement is consistent with the

range of potential cost-of-service determinations by the Commission in the event of a contested hearing.

8. The settlement resolving the last Citizens rate case, Cause No. 42767 ("42767 Settlement Agreement"), included provisions addressing cost-of-service issues. At the time the 42767 Settlement Agreement was entered into, the Commission had issued an order adopting a cost-of-service study utilizing a peak demand and average demand methodology for allocating distribution and mains costs, and CIG and Citizens had filed rehearing petitions and appeals challenging that determination. The 42767 Settlement Agreement provided that in order to resolve the dispute regarding cost of service issues and mitigate rate shock to the Large Volume class, and guided by principles of gradualism, the amount of the revenue requirement increase allocated to the Large Volume class should be 50% of the amount set forth in the compliance rates Citizens filed on October 23, 2006 (42767 Settlement Agreement at 3-4). The 42767 Settlement Agreement also included a provision stating that, in future proceedings, no presumption would be given to any prior methodology for determining cost of service or rate design. The 42767 Settlement Agreement was approved by the Commission in the Order on Rehearing on August 29, 2007.

9. The Parties stipulate that, for purposes of this Settlement Agreement and in connection with the agreed upon revenue requirements, the agreed cost allocation yields just and reasonable rates. The Parties further stipulate that the filed cost allocations are consistent with and may be properly supported under cost-of-service methodology allocations detailed in the NARUC Gas Distribution Rate Design Manual of June 1989. For example, the agreed cost allocation is consistent with and supported by use of the OUCC's modifications to the mains and distribution costs to Citizens' cost-of-

service study, with the rate impacts to certain classes mitigated to avoid rate shock, in a manner consistent with the Commission's approval of the 42767 Settlement Agreement.

10. The Parties agree that the revenue requirements should be allocated to Citizens' customer classes as set forth in Joint Settlement Exhibit 3, attached hereto.

11. No Party, by entering into this Settlement Agreement, has acquiesced in or waived any position with respect to the appropriate methodology for determining cost of service or rate design. The Parties reserve all rights to present evidence and advocate positions with respect to cost of service and rate design issues in all other proceedings, including future Citizens rate proceedings.

III. Depreciation Accrual Rates

12. The Parties agree the Commission should approve the revisions to Citizens' depreciation accrual rates for its gas utility plant in accordance with the results of the "Depreciation Study" prepared by Gannett Fleming and described in the testimony of Citizens' witness Donald J. Clayton. The Parties further agree that Citizens should be authorized to adopt and use the revised depreciation rates set forth in Petitioner's Exhibit DJC-1.

IV. Recovery of Gas Cost Component of Net Write-offs in GCA Filings

13. The Parties agree that Citizens will be authorized to recover in its GCA the gas cost component of net write-off costs at a fixed net write-off ratio of 0.80%. No gas costs associated with net write-off costs will be included in base rates. The margin (*i.e.*, non-gas cost) component of net write-off costs will continue to be recovered through base rates at the same ratio of 0.80%. This methodology provides an incentive for

Citizens to continue to diligently manage its bad debt expense, while ensuring that customers pay bad debt gas costs at the fixed net write-off ratio of 0.80%.

14. The agreed-upon net write-off gas cost recovery methodology is illustrated in Petitioner's Exhibit LSP-6 and described in the direct testimony of Citizens' witness LaTona S. Prentice. Bad debt gas costs will be estimated in the GCA at a level of 0.80% of projected total gas costs (inclusive of unaccounted for gas costs, "UAFG"). In each quarterly GCA, actual recoverable gas costs (again, inclusive of demand, commodity and UAFG) will be multiplied by the fixed net write-off ratio of 0.80%, resulting in "recoverable net write-off costs." Actual net write-off cost recoveries and recoverable net write-off costs will be reconciled in each GCA.

V. Modifications to Citizens' General Terms and Conditions for Gas Service

15. The Parties agree that pursuant to 170 IAC 5-1-27(F), the Commission should approve Citizens' proposed revisions to paragraph 3.6 of its General Terms and Conditions for Gas Service to modify the test for determining when a deposit is required for an extension of Citizens' gas facilities from three years of total revenue to 5 ½ years of non-gas cost revenue (*i.e.*, excluding gas costs recovered through the quarterly GCA mechanism). Paragraph 3.6 of Citizens' General Terms and Conditions for Gas Service should be modified as reflected in Petitioner's Exhibits CAJ-11 and CAJ-12.

16. The Parties agree that the miscellaneous revisions to Citizens' tariffs and General Terms and Conditions for Gas Service set forth in Petitioner's Exhibits CAJ-11 and CAJ-12 and described in the direct testimony of Craig A. Jones are "nondiscriminatory, reasonable, and just," and should be approved by the Commission. Among other items, those revisions include changes to the monthly facility charges to the

D1 and D2 rate classes, an increase in the AMR charge and the addition of Gas Rate S4 regarding Company Use and Unaccounted for Gas.

VI. Benchmarking

17. Based on general research the OUCC has conducted and information it has received from utility industry professionals, the OUCC is interested in benchmarking analyses of regulated Indiana utilities using statistical benchmarking. Statistical benchmarking is one of several possible approaches to performance measurement that makes extensive use of data on utility operations. Two examples of statistical benchmarking methods are productivity indexes and econometric cost models. A productivity index is the ratio of an output and an input quantity index. A productivity trend index attempts to capture the change in a utility's cost over time that is not due to changes in its input prices or operating scale. Econometric cost models attempt to explain the relationship between a utility's costs and an array of quantifiable business conditions in its service territory.

18. During settlement negotiations in this proceeding, the OUCC raised with Citizens the possibility of engaging a consultant to benchmark performance measurements using statistical benchmarking. Citizens has experience using more traditional methods of benchmarking and is willing to participate in a pilot statistical benchmarking study in order to assist the OUCC in evaluating the value of statistical benchmarking as a tool that might be used by the OUCC, Citizens and other Indiana utilities. Through a collaborative process, the OUCC and Citizens will use good faith efforts to reach a consensus regarding the specifications for the performance of a pilot benchmarking study, including the scope of such a study and a list of qualified consultants to perform the study. If the OUCC and Citizens are not able to reach a

unanimous consensus regarding the specifications for the performance of a pilot benchmarking study, including the scope of such a study, within sixty days after approval of the Settlement Agreement, then each party will have the opportunity to submit their respective proposal to the Commission detailing their proposed specifications. These proposals will be submitted, for the Commission's decision, within fifteen business days from the date the Parties determine that a unanimous consensus can not be reached regarding such specifications.

19. The OUCC and Citizens agree to prepare a Request for Proposal (RFP) within thirty days after a decision regarding the specifications for the performance of a pilot benchmarking study has been reached. Based on good faith consideration of the RFP responses, the OUCC and Citizens will endeavor to reach a unanimous consensus regarding an acceptable independent third party consultant for the purpose of conducting a pilot study that benchmarks Citizens' gas operations area against certain peer group utilities. If the OUCC and Citizens are not able to reach a unanimous consensus regarding an acceptable independent third party consultant, then each party will have the opportunity to submit their respective proposal for an independent third party consultant, along with narrative arguments in support, to the Commission. These proposals will be submitted, for the Commission's decision, within fifteen business days from the date the Parties determine that a unanimous consensus can not be reached regarding an acceptable independent third party consultant. Citizens will enter into a contract with an independent third party consultant for a pilot benchmarking study within thirty days after that consultant has been chosen, either by unanimous consensus as described above, or by Commission decision.

20. Citizens agrees to pay the entire cost of the pilot benchmarking study; provided the total cost of the study does not exceed \$125,000 and the Commission authorizes Citizens to defer one-half of the cost of the pilot benchmarking study for subsequent recovery through Citizens' rates and charges in Citizens' next base rate case. Citizens will not seek to defer any other costs it pays for performance of the pilot study. Citizens will not be obligated to justify its relative position among the benchmark group. The OUCC and CIG understand that data provided to the consultant for the performance of the pilot study, as well as the results of the study, may contain information that Citizens considers to be proprietary and confidential. Accordingly, any proprietary data and the results of the pilot study will be shared with the OUCC and the CIG on a confidential basis and treated as "Protected Materials" pursuant to the terms of the Standard Form Nondisclosure Agreement entered into between Citizens and the OUCC on May 12, 2006 and the Confidentiality Agreement entered into between Citizens and the CIG on June 13, 2008. Citizens also agrees to file the results of the pilot benchmarking study with the Commission, within thirty days after Citizens receives the results, pursuant to appropriate confidentiality requirements. The Parties agree that the results of the pilot benchmarking study may not be used in any regulatory proceeding without their prior written consent.

VII. Settlement Agreement -- Scope and Approval

21. Neither the making of this Settlement Agreement nor any of its provisions shall constitute in any respect an admission by any Party in this or any other litigation or proceeding. Neither the making of this Settlement Agreement, nor the provisions thereof, nor the entry by the Commission of a Final Order approving this Settlement Agreement,

shall establish any principles or legal precedent applicable to Commission proceedings other than those resolved herein.

22. This Settlement Agreement shall not constitute nor be cited as precedent by any person or deemed an admission by any Party in any other proceeding except as necessary to enforce its terms before the Commission, or any tribunal of competent jurisdiction. This Settlement Agreement is solely the result of compromise in the settlement process and, except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Parties may take with respect to any or all of the issues resolved herein in any future regulatory or other proceedings.

23. The undersigned have represented and agreed that they are fully authorized to execute this Settlement Agreement on behalf of their designated clients, and their successors and assigns, who will be bound thereby, subject to the agreement of the Parties on the provisions contained herein and in the attached exhibits.

24. The communications and discussions during the negotiations and conferences attended only by any or all of the Parties, their attorneys, and their consultants have been conducted based on the explicit understanding that said communications and discussions are or relate to offers of settlement and therefore are privileged. All prior drafts of this Settlement Agreement and any settlement proposals and counterproposals also are or relate to offers of settlement and are privileged.

25. This Settlement Agreement is conditioned upon and subject to Commission acceptance and approval of its terms in their entirety, without any change or condition that is unacceptable to any Party.

26. The Parties will request Commission acceptance and approval of this Settlement Agreement in its entirety, without any change or condition that is unacceptable to any party to this Settlement Agreement.

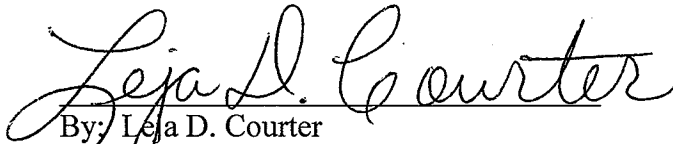
27. The Parties will work together to finalize and file an agreed upon proposed Order with the Commission as soon as possible. The Parties will offer supporting testimony for the approval of this Settlement Agreement in this proceeding and will request that the Commission issue a Final Order promptly accepting and approving the same in accordance with its terms. The Parties also will work cooperatively on news releases or other announcements to the public about this Settlement Agreement.

28. The Parties shall not appeal or seek rehearing, reconsideration or a stay of any Final Order entered by the Commission approving the Settlement Agreement in its entirety without changes or condition(s) unacceptable to any Party (or related orders to the extent such orders are specifically implementing the provisions hereof) and shall support this Settlement Agreement in the event of any appeal or a request for rehearing, reconsideration or a stay by any person not a party hereto.

Accepted and Agreed on this 15th day of August, 2008.

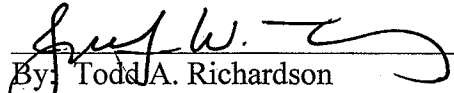
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JOINT SETTLEMENT EXHIBIT 2

Comparison of Petitioner's Revised and the Agreed-Upon Revenue Requirements

<u>Revenue Requirement</u>	<u>Per Petitioner's Proposal</u>	<u>Per Settlement</u>	<u>Settlement More(Less)</u>
Gas Cost	\$ 326,608,969	\$ 326,608,969	
Operation & Maintenance Exp.	42,491,037	40,702,569	(1,788,468)
General & Administrative Exp.	35,265,587	34,690,587	(575,000)
Depreciation	19,528,333	19,528,333	
Taxes	7,157,245	7,157,245	
Debt Service	26,375,886	26,375,886	
E&R	23,994,628	23,994,628	
Less: Depreciation	<u>(19,528,333)</u>	<u>(19,528,333)</u>	
Revenue Requirement	\$ 461,893,352	\$ 459,529,884	
Pro forma Revenue	<u>443,392,884</u>	<u>443,392,884</u>	
Revenue Increase (before IURT)	<u>\$ 18,500,468</u>	<u>\$ 16,137,000</u>	<u>\$ (2,363,468)</u>
Incremental Utility Receipts Tax	264,833	\$ 231,000	\$ (33,833)
Incremental Net Write-Off Non-Gas Cost	151,333	\$ 132,000	\$ (19,333)
Total Revenue Requirement	462,309,518	459,892,884	
Total Revenue Increase	\$18,916,634	\$16,500,000	
Percent Increase	4.3%	3.7%	
Total Adjustments			<u>\$ (2,416,634)</u>

JOINT SETTLEMENT EXHIBIT 3
Allocation of Revenue Requirement
(excluding gas costs, in thousands)

	<u>Pro forma revenue</u> <u>Current rates</u>	<u>Pro forma revenue</u> <u>Settlement rates</u>	<u>Percentage</u> <u>Increase</u>
Residential non-heat	\$ 722	\$ 871	20.63%
Residential heat	\$ 81,217	\$ 92,184	13.50%
General non-heat	\$ 1,421	\$ 1,441	1.41%
General Heat	\$ 27,360	\$ 31,033	13.42%
Large volume	\$ 3,970	\$ 5,248	32.19%
CNG	\$ 5	\$ 16	193.00%
High load	\$ <u>2,089</u>	\$ <u>2,491</u>	19.24%
	\$116,784	\$133,284	14.13%

